



DEPARTMENT OF HEALTH AND HUMAN SERVICES

45 CFR Part 3

[Docket Number – NIH-2020-0002]

RIN 0925-AA67

Conduct of Persons and Traffic on the National Institutes of Health Federal Enclave

AGENCY: National Institutes of Health, Department of Health and Human Services (HHS).

ACTION: Final rule.

SUMMARY: The Department of Health and Human Services (HHS or Department), through the National Institutes of Health (NIH), is amending the existing regulation for the conduct of persons and traffic on the NIH enclave in Bethesda, Maryland, to update certain provisions of the regulation.

DATES: This final rule is effective February 8, 2023.

FOR FURTHER INFORMATION CONTACT: Daniel Hernandez, NIH Regulations Officer, Office of Management Assessment, NIH, Rockledge 1, 6705 Rockledge Drive, Suite 601, Room 601-T, Bethesda, MD 20817, MSC 7901, by email at dhernandez@mail.nih.gov, or by telephone at 301-435-3343 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

I. Background

On November 16, 2020, the Department of Health and Human Services (HHS or Department) issued a direct final rule (85 FR 72899) amending certain regulations, as part of its Regulatory Clean Up Initiative, to make miscellaneous corrections, including correcting references to other regulations, misspellings and other typographical errors. These corrections included changes to the regulation codified at 45 CFR part 3 concerning the conduct of persons and traffic on the National Institutes of Health Federal Enclave. With this final rule the Department makes several additional changes to 45 CFR part 3 that are necessary to further update the regulation. These

additional changes were determined to be necessary following the review of the regulation conducted by NIH in 2019.

HHS announced its intention to take this rulemaking action in the notice of proposed rulemaking (NPRM) titled “Conduct of Persons and Traffic on the National Institutes of Health Federal Enclave” published in the *Federal Register* on February 28, 2022 (87 FR 11001). In the NPRM we provided a sixty-day comment period. The comment period ended on April 29, 2022.

In the NPRM, we proposed making several changes to the regulation at 45 CFR part 3 concerning the conduct of persons and traffic on the National Institutes of Health Federal Enclave that are necessary to ensure the regulation is up to date.

In subpart A of the regulation, we proposed amending § 3.4 by removing the last sentence that specifies the Police Office’s main location and telephone number. The NIH Police Department may be relocated in the future under the current campus master plan. Removing the sentence eliminates the need in the future to amend the regulation any time the NIH Police Department is relocated.

In subpart C of the regulation, we proposed amending § 3.42 by revising the last sentence of paragraph (b) to update several terms. The existing last sentence states that the use of a dog by a handicapped person to assist that person is authorized. We proposed updating this sentence by replacing the term “dog” with the term “service animal”. We also proposed to update this sentence by removing the term “handicapped person” and replacing it with the term “a person with a disability” to reflect current and accepted use of the term.

Additionally, in subpart C, we proposed amending § 3.42 by revising paragraph (f) to state that except as part of an approved medical research protocol a person may not smoke on the enclave. The existing language does not prohibit smoking outside of buildings on the enclave. As a tobacco-free campus, NIH does not allow smoking inside or outside buildings. The change makes this clear in the regulation.

In subpart D, we proposed amending § 3.61 by revising paragraph (a) to state that a person found guilty of violating any provision of the regulation in this part is subject to a fine or imprisonment of not more than thirty days or both, for each violation (Pub. L. 107-296, Homeland Security Act of 2002). The United States District Court for the District of Maryland determines the fine/fee schedule for violations of 45 CFR part 3. Traffic related violations on the NIH Federal enclave are covered by the Maryland District Court. Not stating a specific dollar amount for the fine in paragraph (a) eliminates any future need to amend the regulation when incremental increases in the fine amount occur. Information regarding 45 CFR part 3 violations can be found through the United States Attorney's Office for the District of Maryland or the United States Central Violations Bureau in San Antonio, Texas.

II. Summary of Public Comments

We did not receive any comments in response to the NPRM. Consequently, we did not make any changes to what we proposed in the previous NPRM. The final rule is the same as what we proposed in the previous NPRM.

We provide the following as public information.

Regulatory Impact Analysis

We examined the impacts of this final rule under Executive Order (E.O.) 12866, Regulatory Planning and Review; E.O. 13563, Improving Regulation and Regulatory Review; E.O. 13132, Federalism; the Regulatory Flexibility Act (5 U.S.C. 601-612); and the Unfunded Mandates Reform Act of 1995 (Pub. L. 104-4).

Executive Orders 12866 and 13563

E.O. 12866, Regulatory Planning and Review, and E.O. 13563, Improving Regulation and Regulatory Review, direct Federal agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity) for all significant regulatory actions. A regulatory

impact analysis (RIA) must be prepared for major rules with economically significant effects (\$100 million or more in any one year). Based on our analysis, we believe this final rule does not constitute a significant or economically significant regulatory action.

Executive Order 13132

Executive Order 13132, Federalism, requires Federal agencies to consult with State and local government officials in the development of regulatory policies and with federalism implications. We reviewed the final rule as required under the order and determined that it will not have a significant potential negative impact on States, in the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government and does not have any federalism implications. The Secretary asserts that this final rule will not have effect on the States or on the distribution of power and responsibilities among the various levels of government.

Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601-612) requires Federal agencies to analyze regulatory options that would minimize any significant impact of the rule on small entities. For the purpose of this analysis, small entities include small business concerns as defined by the Small Business Administration (SBA), usually businesses with fewer than 500 employees. The Secretary asserts that the final rule will not create a significant economic impact on a substantial number of small entities, and therefore a regulatory flexibility analysis, is not required.

Unfunded Mandates Act of 1995

Section 202(a) of the Unfunded Mandates Reform Act of 1995 requires Federal agencies to prepare a written statement that includes an assessment of anticipated costs and benefits before proposing “any rule that includes any Federal mandate that may result in the expenditure by State, local, and tribal organizations, in the aggregate, or by the private sector, of \$100,000,000 or more (adjusted annually for inflation with base year of 1995) in any one year.” The current inflation-adjusted statutory threshold for 2022 is approximately \$165 million based on the Gross

Domestic Product deflator. This final rule will not result in a one-year expenditure that would meet or exceed that amount.

Paperwork Reduction Act

This final rule does not contain any information collection requirements that are subject to Office of Management and Budget (OMB) approval under the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35).

List of Subjects in 45 CFR Part 3

Conduct, Federal buildings and facilities, Firearms, Government property, Traffic regulations.

For reasons presented in the preamble, 45 CFR part 3 is amended as set forth below.

PART 3 - CONDUCT OF PERSONS AND TRAFFIC ON THE NATIONAL INSTITUTES OF HEALTH FEDERAL ENCLAVE

1. The authority citation for part 3 continues to read as follows:

Authority: 40 U.S.C. 318-318d. 486; Delegation of Authority, 33 FR 604.

§ 3.4 [Amended]

2. Section 3.4 is amended by removing the last sentence of the paragraph.

3. Section 3.42 is amended by revising the last sentence in paragraph (b) and paragraph (f) to read as follows:

§ 3.42 Restricted activities.

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(b) * * * The use of a service animal by a person with a disability to assist that person is authorized.

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(f) *Smoking.* Except as part of an approved medical research protocol, a person may not smoke on the enclave.

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4. Section 3.61 is amended by revising paragraph (a) to read as follows:

§3.61 Penalties.

(a) A person found guilty of violating any provision of the regulations in this part is subject to a fine or imprisonment of not more than thirty days or both, for each violation (Pub. L. 107-296, Homeland Security Act of 2002).

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Xavier Becerra,

Secretary,

Department of Health and Human Services.

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